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98TH CONGRESS
2D SESSION

H. R. 4681

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1984

Mr. BROOKS introduced the following bill; which was referred to the Committee on Post Office and Civil Service

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A BILL

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Polygraph Limitation and Anti-Censorship Act of 1984".

FINDINGS

SEC. 2. (a) The Congress hereby finds that—

(1) there is no scientific evidence to demonstrate the validity of polygraph testing for any screening purpose;

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(2) use of the polygraph for screening purposes runs a great risk of incorrectly labeling large numbers of persons: many innocent people will be incorrectly branded as liars, and many who are lying will be identified as truthful;

(3) coercing submission to polygraph testing through the threat of penalties will create an even greater risk of misidentification; and

(4) polygraph testing for screening purposes and its involuntary use for any purpose is therefore an unsound policy which should not be followed and for which Federal funds should not be expended.

(b) The Congress further finds that—

(1) prepublication review requirements by the Federal Government of its employees and former employees constitute a Government censorship program;

(2) this censorship program has great potential for the restriction of the free flow of nonclassified information and is therefore an unwarranted infringement of open debate on matters of national importance;

(3) this censorship program entails strong disincentives to Government service for qualified citizens; and

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(4) this censorship program is readily subject to intentional manipulation and abuse for partisan political purposes.

RESTRICTION OF AUTHORITY TO ADMINISTER POLYGRAPH EXAMINATIONS

SEC. 3. (a) Except as provided in section 6, no agency may—

(1) require or threaten to require any employee to submit to any polygraph examination;

(2) request any employee to submit voluntarily to any polygraph examination unless such request is permitted by subsection (b); or

(3) impose or threaten to impose any sanction with respect to any employee—

(A) on the basis of the employee's refusal to submit to any examination; or

(B) on the basis of any inference or determination made from the employee's performance in the course of a polygraph examination.

(b) An agency may request an employee to submit voluntarily to a polygraph examination if the examination is administered as part of a specific investigation into alleged criminal conduct or an unauthorized disclosure of classified information—

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(1) after completion, by other means, of as thorough an investigation as circumstances reasonably permit;

(2) for the development of additional information that is essential to that investigation; and

(3) to an individual reasonably believed to have knowledge of, to be involved in, or to be withholding information concerning, the matter under investigation.

(c) For the purpose of subsection (b), the term "classified information" means information (1) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (2) in fact properly classified pursuant to such Executive order.

PROHIBITION AGAINST REQUIRING AND ENFORCING PREPUBLICATION REVIEW REQUIREMENTS

SEC. 4. (a) Except as provided in section 6, no agency may—

(1) impose or threaten to impose upon any employee any prepublication review requirement;

(2) impose or threaten to impose any sanction with respect to any employee—

(A) on the basis of the employee's refusal to enter into a prepublication review agreement; or

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(B) on the basis of the employee's failure to comply with any prepublication review requirement; or

(3) otherwise enforce or threaten to enforce such an agreement or requirement.

(b) The head of each executive agency to which this Act is applicable shall rescind all prepublication review agreements in effect on the date of enactment of this Act and provide written notice of such recission to each affected employee.

EMPLOYEE'S REMEDIES

SEC. 5. (a) Any person aggrieved by a violation of this Act may institute an action for injunctive or monetary relief, or both, in the United States District Court for the District of Columbia or for the district in which that person resides or in which that person was employed at the time the cause of action arose. Such person may also petition the court for appropriate temporary relief (including a restraining order), and the court shall grant such relief unless there is no probable cause to believe that a violation has occurred or will occur.

(b) An action for monetary relief may include relief for damages to reputation and privacy.

(c) The court shall award to a prevailing plaintiff in an action brought under this section costs of litigation and reasonable attorney's fees.

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(d) The remedies provided by this section are in addition to, and not in lieu of, any other remedy available to any employee by law.

EXEMPTIONS

SEC. 6. This Act shall not apply with respect to employees of the Central Intelligence Agency or the National Security Agency.

CONSTRUCTION

SEC. 7. Nothing in this Act shall be construed to authorize the administration of, or to constitute congressional affirmation of or acquiescence in any assertion of authority to administer, any polygraph examination or prepublication review requirement.

DEFINITIONS

SEC. 8. For purposes of this Act—

(1) the term "sanction" means any action which results in dismissal, demotion, nonselection for employment or assignment, denial or revocation of clearance, suspension, reassignment, reprimand, transfer, or any other unfavorable consequence related to the status of an employee or to appointment to employment;

(2) the term "employee" means (A) an employee as defined in section 2105(a) of title 5, United States Code, (B) an individual who was formerly such an em-

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ployee, or (C) any applicant for appointment as such an employee;

(3) the term "agency" has the meaning given in section 552(e) of title 5, United States Code;

(4) the term "polygraph examination" means an interview with an individual which is conducted in whole or in part for the purpose of enabling the examiner to infer or otherwise make a determination concerning, by evaluation of measured and recorded physiological responses, whether the individual has truthfully or deceptively responded to inquiries made in such interview;

(5) the term "prepublication review" means submission of information to an agency for the purpose of permitting such agency to examine, alter, excise, or otherwise edit or censor such information before it is publicly disclosed, but does not include any such submission with respect to information which is to be disclosed by an employee in his or her official capacity;

(6) the term "prepublication review agreement" means any agreement or any portion of any agreement between an agency and any employee which requires prepublication review; and

(7) the term "prepublication review requirement" means any action by an agency which requires an em-

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ployee to submit to prepublication review, and includes a prepublication review agreement.

EFFECTIVE DATE

SEC. 9. This Act shall apply on and after April 15, 1984.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

OLL # 84-1268

March 30, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Defense
Department of Justice
Department of State
National Security Council
Central Intelligence Agency

SUBJECT: OPM proposed report on H.R. 4681, "Federal Polygraph Limitation and Anti-Censorship Act of 1984."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than April 5, 1984. Committee may mark up at any time.

Questions should be referred to Hilda Schreiber
(395-4650) ~~or to~~ ---------- (----------)
the legislative analyst in this office.

Naomi R Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

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